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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43470
Plaintiff-Respondent,)	
)	BONNEVILLE COUNTY NO. CR 2015-1705
v.)	
)	
KYLE KENT STRINGHAM,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BONNEVILLE**

**HONORABLE BRUCE PICKETT
District Judge**

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
Nature of the Case	1
Statement of the Facts and Course of Proceedings	1
ISSUE PRESENTED ON APPEAL	4
ARGUMENT	5
The District Court Erred When It Denied Mr. Stringham's Motion To Suppress	5
A. Introduction	5
B. Standard Of Review	5
C. The Totality Of The Circumstances Does Not Establish A Reasonable Suspicion That Mr. Stringham Was Driving In Violation Of I.C. § 49-630	6
CONCLUSION	9
CERTIFICATE OF MAILING	10

TABLE OF AUTHORITIES

Cases

<i>North Carolina v. Alford</i> , 400 U.S. 25 (1970).....	2
<i>State v. Bishop</i> , 146 Idaho 804 (2009).....	6, 9
<i>State v. Danney</i> , 153 Idaho 405 (2012).....	5, 6
<i>State v. Edwards</i> , 158 Idaho 323 (Ct. App. 2015)	6
<i>State v. Flowers</i> , 131 Idaho 205 (Ct. App. 1998)	6
<i>State v. Green</i> , 158 Idaho 884 (2015).....	6
<i>State v. Hansen</i> , 138 Idaho 791 (2003).....	6
<i>State v. Henage</i> , 143 Idaho 655 (2007)	6
<i>State v. Hunter</i> , 156 Idaho 568 (Ct. App. 2014)	5
<i>State v. Morgan</i> , 154 Idaho 109 (2013).....	5, 6
<i>State v. Munoz</i> , 149 Idaho 121 (2010)	5
<i>State v. Watts</i> , 142 Idaho 230 (2005).....	5
<i>Terry v. Ohio</i> , 392 U.S. 1 (1968)	6
<i>United States v. Cortez</i> , 449 U.S. 411 (1981)	6
<i>United States v. Sokolow</i> , 490 U.S. 1 (1989)	6
<i>Wong Sun v. United States</i> , 371 U.S. 471 (1963).....	9

Statutes

I.C. § 49-601	7
I.C. § 49-630	<i>passim</i>
I.C. § 49-654(1)	7, 8
I.C. § 49-655	7, 8

Rules

Idaho Criminal Rule 35.....	1
-----------------------------	---

STATEMENT OF THE CASE

Nature of the Case

Kyle Kent Stringham was stopped for driving a vehicle too slow in the left lane of the highway. Under the circumstances, however, Mr. Stringham's slow speed was not a violation of Idaho's traffic laws. Therefore, the police officer had no reasonable suspicion to conduct a traffic stop. All evidence found during the search of the vehicle should have been suppressed due to the unlawful seizure. For this reason, Mr. Stringham asserts that the district court erred by denying his motion to suppress.

Statement of Facts and Course of Proceedings

Interstate 15 ("I-15") is a four-lane highway, with two lanes traveling north and two lanes traveling south. (R., p.40.) The speed limit is 80 miles per hour. (R., p.40.) At 4:22 p.m. on February 9, 2015, Idaho State Police Corporal Vance Cox stopped a vehicle on I-15 because he believed it was being driven too slow in the left lane in violation of I.C. § 49-630. (R., pp.40–41.) The vehicle was a Chevrolet SUV with a rooftop carrier holding luggage and other items. (R., p.40.) Corporal Cox testified that he had observed other vehicles for about an hour prior to the stop driving between 75 and 85 miles per hour, with an average of 80 miles per hour. (Tr. Vol. I,¹ p.13, Ls.15–19; R., pp.40–41.) Corporal Cox used a radar detector to clock the speed of the SUV at 68 miles per hour. (R., p.40.) Mr. Stringham was the driver. (R., p.40.)

¹ There are four transcripts on appeal. The first, cited as Volume I, contains the hearing on Mr. Stringham's motion to suppress. The second, cited as Volume II, contains the entry of plea hearing. The third, cited as Volume III, contains the sentencing hearing. The fourth, cited as Volume IV, contains the hearing on Mr. Stringham's Idaho Criminal Rule 35 motion.

A subsequent search of the vehicle uncovered contraband, and the State filed a Criminal Complaint alleging Mr. Stringham committed the crimes of possession of a controlled substance, methamphetamine, and unlawful possession of a firearm. (R., pp.9–13.) Mr. Stringham waived a preliminary hearing. (R., p.16.) The magistrate bound him over to district court. (R., pp.16–17.) The State filed an Information charging him with possession of a controlled substance and unlawful possession of a firearm. (R., p.85.)

Mr. Stringham filed a motion to suppress, contending the traffic stop was an unlawful seizure in violation of the Fourth Amendment of the U.S. Constitution and Article I, § 17 of the Idaho Constitution. (R., pp.27–31.) He argued Corporal Cox lacked a reasonable suspicion to stop him for a violation of I.C. § 49-630. (R., pp.27–31.) The State responded in opposition. (R., p.36.) The district court held a hearing on the motion. (R., pp.38–39; see *generally* Tr. Vol. I, p.5, L.1–p.30, L.21.) Corporal Cox testified, and a video of the stop was admitted into evidence. (R., p.38; Tr. Vol. I, p.6, L.12–p.19, L.1.) The district court issued an Opinion, Decision, and Order on Defendant’s Motion to Suppress denying the motion. (R., pp.40–47.) The district court concluded the traffic stop was justified by a reasonable suspicion that Mr. Stringham was driving in violation of I.C. § 49-630. (R., pp.46–47.)

The State amended the Information to add a persistent violator sentencing enhancement. (R., pp.57, 66, 68–70; Tr. Vol. II, p.12, L.7–p.13, L.2.) Pursuant to a plea agreement, Mr. Stringham entered a conditional *Alford*² plea to possession of a controlled substance, and the unlawful possession of a firearm charge and sentencing

² *North Carolina v. Alford*, 400 U.S. 25 (1970).

enhancement were dismissed. (R., pp.62–65, 72–73, 81, 87; Tr. Vol. II, p.3, L.11–p.4, L.23, p.13, L.3–p.17, L.15.) Mr. Stringham reserved the right to appeal the district court’s denial of his motion to suppress. (R., p.62; Tr. Vol. II, p.3, L.23–p.4, L.4.) After a sentencing hearing, the district court imposed a sentence of seven years, with two years fixed. (R., pp.85–86; Tr. Vol. III, p.33, Ls.13–21.) Mr. Stringham filed a timely Notice of Appeal from the district court’s Judgment of Conviction. (R., pp.85–86, 93–95.)

ISSUE

Did the district court err when it denied Mr. Stringham's motion to suppress?

ARGUMENT

The District Court Erred When It Denied Mr. Stringham's Motion To Suppress

A. Introduction

Mr. Stringham asserts that the district court erred by denying his motion to suppress evidence obtained from the search of the vehicle. He contends that the search was the product of an unlawful traffic stop without any reasonable suspicion that Mr. Stringham committed a traffic infraction. Therefore, all evidence obtained from the subsequent search of the vehicle should have been suppressed as the fruit of the unlawful stop.

B. Standard Of Review

The Court uses a bifurcated standard to review a district court's order on a motion to suppress. *State v. Danney*, 153 Idaho 405, 408 (2012); *see also State v. Hunter*, 156 Idaho 568, 571 (Ct. App. 2014) (same). "The Court accepts the trial court's findings of fact if supported by substantial evidence." *State v. Watts*, 142 Idaho 230, 234 (2005). "At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence and draw factual inferences is vested in the trial court." *Hunter*, 156 Idaho at 570. The Court exercises free review of "the trial court's application of constitutional principles to the facts found." *Danney*, 153 Idaho at 408. Determinations of reasonable suspicion are reviewed de novo. *State v. Morgan*, 154 Idaho 109, 111 (2013) (citing *State v. Munoz*, 149 Idaho 121, 127 (2010)).

C. The Totality Of The Circumstances Does Not Establish A Reasonable Suspicion That Mr. Stringham Was Driving In Violation Of I.C. § 49-630

“The Fourth Amendment of the United States Constitution protects citizens from unreasonable search and seizure.” *State v. Hansen*, 138 Idaho 791, 796 (2003). “Article I, Section 17 of the Idaho Constitution nearly identically guarantees that ‘[t]he right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.’” *State v. Green*, 158 Idaho 884, 886 (2015) (alteration in original).

“Traffic stops constitute seizures under the Fourth Amendment.” *Morgan*, 154 Idaho at 112 (quoting *State v. Henage*, 143 Idaho 655, 658 (2007)). “Under the Fourth Amendment, an officer may stop a vehicle to investigate if there is a reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws.” *State v. Edwards*, 158 Idaho 323, 324 (Ct. App. 2015) (citing *United States v. Cortez*, 449 U.S. 411, 417 (1981); *State v. Flowers*, 131 Idaho 205, 208 (Ct. App. 1998)).

“Reasonable suspicion must be based on specific, articulable facts and the rational inferences that can be drawn from those facts.” *Morgan*, 154 Idaho at 112 (quoting *State v. Bishop*, 146 Idaho 804, 811 (2009)). “[A]n officer may take into account his experience and law enforcement training in drawing inferences from facts gathered,” *Danney*, 153 Idaho at 410, but “[t]he officer, of course, must be able to articulate something more than an ‘inchoate and unparticularized suspicion or ‘hunch.’”” *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968)); see also *Morgan*, 154 Idaho at 112 (same). “The test for reasonable suspicion is based on the totality of the circumstances known to the officer at or before the time of the stop.” *Morgan*, 154 Idaho at 112.

Title 49, Chapter 6 of the Idaho Code provides for various rules of the road for the operation of vehicles on highways. See I.C. § 49-601. Regarding speed maximums and minimums, I.C. § 49-654(1) states: “No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing.” I.C. § 49-654(1). Consistent with this rule, “every person shall drive at a safe and appropriate speed . . . when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.” I.C. § 49-654(1). For interstate highways specifically, where no “special hazard or condition” requires a lower speed, the limit of 75 or 80 miles per hour will be the “maximum lawful speed.” I.C. § 49-654(2)(b). “[N]o person shall drive a vehicle at a speed in excess of the maximum limits.” I.C. § 49-654(2). Conversely, “[n]o person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with the law.” I.C. § 49-655.

Generally, vehicles must be driven on the right lane of a highway. I.C. § 49-630(1). A vehicle may drive in the left lane when passing another vehicle or “when an obstruction exists making it necessary to drive to the left of the center of the highway.”

I.C. § 43-630(1)(a)–(b). In addition, I.C. § 49-630(2) requires:

Upon all highways any vehicle proceeding at less than normal speed of traffic at the time and place and under the conditions then existing, shall be driven in the right-hand lane available for traffic, or as close as practicable to the right-hand curb or edge of the highway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

I.C. § 49-630(2). In short, any vehicle driving slower than the normal speed of traffic “at the time and place and under the conditions then existing” must be in the right lane of the highway.

In this case, Mr. Stringham submits that he was not driving at less than the normal speed of traffic “at the time and place and under the conditions then existing,” thereby eliminating the statutory requirement that he drive in the right lane. For one, there is no evidence that the vehicle’s speed itself was a violation of Idaho’s traffic laws. Mr. Stringham was driving 68 miles per hour in an 80 miles per hour speed zone (R., p.40.) He clearly was not driving in excess of the maximum speed. I.C. § 49-654(2). Nor was he driving “at such a slow speed as to impede the normal and reasonable movement of traffic.” I.C. § 49-655. No evidence indicates that Mr. Stringham’s speed impeded traffic in any way. (See R., pp.40–41; State’s Ex. 1,³ 16:21:37–16:22:57.) Therefore, although Mr. Stringham was driving twelve miles under the speed limit, there is no evidence to support a reasonable suspicion Mr. Stringham was driving in violation of the speed minimum and maximum laws.

Moreover, Mr. Stringham argues that he was not driving in violation of I.C. § 49-630(2) because, “at the time and place and under the conditions then existing,” his speed was not less than the “normal speed of traffic.” The weather was windy that day. (R., p.40; see State’s Ex. 1, 16:22:54–16:24:49.) Mr. Stringham was driving a SUV with items loaded on the roof rack. (R., pp.40, 46; see State’s Ex. 1, 16:22:39.) These conditions warranted a “normal speed of traffic” slower than 80 miles per hour. Moreover, as shown on the video, there were no vehicles driving nearby Mr. Stringham

prior to the traffic stop. (State's Ex. 1, 16:21:37–16:22:57.) Thus, at “the time and place” then existing, the vehicle driven by Mr. Stringham established the normal speed of traffic since it was one of the only vehicles on the road at that time and place. (See Tr. Vol. I, p23, L.19–p.24, L.8 (defense counsel's argument).) Considering “the time and place” and “the conditions” then existing together, Mr. Stringham submits that the “normal speed of traffic” was not exclusively 80 miles per hour. Driving twelve miles under the speed limit was also a “normal” speed under the circumstances. Therefore, Mr. Stringham asserts that the totality of the circumstances do not establish a reasonable suspicion that he was driving contrary to I.C. § 49-630 to justify the traffic stop. Because the traffic stop was unlawful, all evidence uncovered from the search of the vehicle should have been suppressed as the fruit of the unlawful seizure. See *Wong Sun v. United States*, 371 U.S. 471, 488 (1963) (evidence obtained through unconstitutional police conduct subject to exclusion); *Bishop*, 146 Idaho at 810–11 (same). For this reason, Mr. Stringham contends that the district court erred by denying his motion to suppress.

CONCLUSION

Mr. Stringham respectfully requests that this Court vacate the district court's judgment of conviction and reverse its order denying his motion to suppress.

DATED this 26th day of April, 2016.

/s/
JENNY C. SWINFORD
Deputy State Appellate Public Defender

³ Citations to a specific portion of the State's Exhibit 1 (DVD of the traffic stop) refer to the time-stamp on the upper left corner of the video.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 26th day of April, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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_____/s/_____
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Administrative Assistant

JCS/eas